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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,265	09/24/2001	Andre Cesar Baeck	CM2079	6423

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,265

Applicant(s)

BAECK, ANDRE CESAR

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Specification

1. The abstract of the disclosure is objected to because it need not recite “[t]he present invention relates to. Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities:

The copending foreign applications cited below should be updated:

a) page 21, third line from last;

b) page 22, lines 9, 20 and 21;

c) page 24, lines 11-12;

d) page 25, fourth line from last;

e) page 27, line 20

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 56167798, hereinafter “JP ‘798”.

JP ‘798 teaches a detergent composition comprising at least one anionic and/or nonionic surfactant, detergent builder and modified clay prepared by acid treating clay minerals of montmorillonite group having at least 45 meq/100g cation exchanging capacity until at least 10 wt% and below 35 wt% Al_2O_3 component is eluted (see abstract). JP ‘798 teaches the limitations of the instant claim. Hence, JP ‘798 anticipates the claim.

5. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 57167454, hereinafter “JP ‘454”.

JP ‘454 teaches a composition useful as softening agent for clothes which comprises an acid-treated clay, wherein the clay is prepared by treating a clay mineral belonging to montmorillonite group with hydrochloric acid in the half wet state and mixed with 1-10 parts citric acid (see abstract). JP ‘454 teaches the limitations of the instant claim. Hence, JP ‘454 anticipates the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP '798.

JP '798 teaches the features as described above. Even though JP '798 does not specifically disclose the ratio of $\text{Al}_2\text{O}_3/\text{MgO}$ it would be inherent of the modified montmorillonite clay of JP '798 to have a ratio of $\text{Al}_2\text{O}_3/\text{MgO}$ within those recited because same clay which is acid-treated has been utilized. Hence, JP '798 anticipates the claims.

8. Claims 12-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP '454.

JP '454 teaches the features as described above. In addition, JP '454 teaches that the softening composition can contain granulating agents like ethylene glycol, carboxymethyl cellulose, perfume, dyestuff and pigment (see abstract). Even though JP '454 does not specifically disclose the ratio of $\text{Al}_2\text{O}_3/\text{MgO}$ it would be inherent of the acid-treated montmorillonite clay of JP '454 to have a ratio of $\text{Al}_2\text{O}_3/\text{MgO}$ within those recited because same clay which is acid-treated has been utilized. Hence, JP '454 anticipates the claims.

9. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '798.

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JP '798 teaches the features as described above. In addition, JP '798 teaches that the modified clay is present in amounts of 1-30 wt% in the composition, which is also particulated (see abstract). JP '798, however, fails to specifically disclose the proportion of the modified montmorillonite clay in amounts as those recited and the bulk density of the composition.

A *prima facie* case of obviousness exists because the claimed ranges “overlap or lie inside ranges disclosed by the prior art”, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the oil component, surfactant and water of Dawson through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Even though JP '798 does not explicitly disclose the bulk density of the composition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the bulk density of the composition of JP '798 to be within those recited because similar detergent composition^S having acid modified montmorillonite clay have been utilized.

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10. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '798 as applied to the above claims, and further in view of Boskamp et al. (US Patent No. 6,313,080), hereinafter "Boskamp".

JP '798 teaches the features as described above. JP '798, however, fails to specifically disclose the detergent composition in tablet form and the proportions of the clay in each regions in amounts as those recited.

Boskamp teaches that tablets have several advantages over powdered products like the ease of handling and dispensing into the washload and are more compact, hence facilitating more economical storage (see col. 1, lines 10-13). Boskamp also teaches detergent tablet for fabric washing which is compacted from particulate detergent compositions with a fabric conditioning agent, like bentonite clay, present in one zone of the tablet at a greater concentration than in another zone (see abstract, Example 1). As a consequence, the release of at least some of the fabric softening agent into the wash liquor and the deposition of it onto the fabrics in the wash will be delayed until after the washing of fabrics has started to reduce interference between the functions of dirt removal from fabric and deposition of softening agent onto the fabric (see col. 1, lines 33-38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the particulate composition of JP '798 into tablet form because tablets have several advantages like ease of handling as taught by Boskamp and to optimize the proportions of the clay of JP '798 in each regions of the tablet of Boskamp because this would provide a delay in

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release of the fabric softening agent into the fabric to reduce interference between the functions of dirt removal from fabric and deposition of softening agent onto the fabric as taught by Boskamp.

11. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. These references are considered cumulative to or less material than those discussed above.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

August 25, 2003

Lorna M. Douyon
Lorna M. Douyon
Primary Examiner
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